IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7475 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SATWARA PAMIBEN KALYANJI

Versus

STATE OF GUJARAT & ORS.

Appearance:

MS. SADHNA SAGAR MR MJ BUDDHBHATTI for Petitioner No. 1

MR. U.R.BHATT, AGP for Respondents No. 1,4 & 2

MR AM MEHTA for Respondent No. 3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 28/11/2001

ORAL JUDGEMENT

The petitioner, an individual, has filed this petition seeking fixation of salary and payment of backwages. However, an amendment was carried out in March 1989, whereby the petitioner further sought relief

against the respondent to the effect that the pay scale of the petitioner should be revised as per Government Resolution by fixing the salary as a part time peon is entitled to and that the respondent is an 'industry' within the meaning of Section 2 of the Industrial Disputes Act, 1947 and the petitioner is falling within the meaning of "workman" of Section 2(9) of the Industrial Disputes Act, 1947. Thereafter, once again, an amendment was prayed for and the Court granted permission to amend the petition on 27th September, 2001 and accordingly the following prayer was made :

> "(AA) Declared that the petitioner belonging to reserve category and working as part-timer since 1981 is entitled to get the benefit of GR's dtd. 26-12-80, 15-2-99, 15-10-92, annexure- C, D, and E and direct the respondent to absorb the petitioner as peon class IV post on her completing 10 years of service as per the policy of the Government and direct the respondent to treat her as absorbed as peon after 10 years of her service as part-timer and to pay her regular salary and arrears on that basis."

2. Ms.Sadhna Sagar, learned Advocate appearing on behalf of the petitioner submitted that the petitioner has been employed as a part-time peon in the primary school at Village - Dhunvav since 1981 and that she was not even paid minimum wages as required under the law.

3. It appears that there was a dispute as to the nature of duties and the hours of working of the petitioner and hence, the Court by its order dated 09th October, 1990 (Coram : S.B.Majmudar and N.J.Pandya, JJ) ordered that the Assistant Commission of Labour, Jamnagar be added as respondent No.4 and directed him to go on spot and find out as to which is the exact work which the petitioner is carrying out and also to ascertain what are the minimum wages payable to the petitioner as per the rules and regulations applicable in the case. Accordingly, respondent No.4, namely, the Assistant Commissioner of Labour submitted a report before the Court some time in December, 1990 after making a personal visit on 23rd October, 1990 at the school.

4. Taking the said report into consideration on 14th December, 1990, this Court (Coram : A.P.Ravani and D.G.Karia, JJ) issued Rule in the matter and after taking into consideration, the report of respondent No.4 that the petitioner was working for about one and half hour per day took into consideration that as per Government Resolution, the monthly wages for the part-time work performed by the petitioner would be Rs.319.30. By way of interim relief respondent No.3 was directed to calculate the amount of wages payable to the petitioner at the rate of Rs.200/- per month w.e.f. 01st December, 1987 and make the payment to the petitioner accordingly. The said order came to be modified on 30th January, 1991 (Coram : A.P.Ravani and M.S.Parikh, JJ) that though back wages were paid under directions given in order dated 14th December, 1990 as the petitioner was not being paid monthly wages during pendency of the petition, respondent No.3 was directed to pay the amount of wages to the petitioner at the rate of Rs.200/- per month.

5. At the time of hearing only relief that is claimed is that the petitioner who belongs to the reserved category and who is working as part-time peon since 1981 should be granted benefit of Government Resolution dated 26th December, 1980, 15th October, 1992 and 15th February, 1999 and further that the respondent should absorb the petitioner as peon in Class-IV post on completion of more than 10 years service and consequential benefits by way of regular salary and arrears on the aforesaid basis.

6. On behalf the respondents, Mr.U.R.Bhatt, the learned A.G.P. relies upon the affidavit-in-reply filed by the respondent.

7. The undisputed facts are that the petitioner is working as a part-timer since 1981 in the primary school at village - Dhunvav. The nature of work and the hours of work that she is called upon to attend was initially in dispute but after the report tendered by respondent No.4 stands concluded. It is an admitted fact that the petitioner has put in more than 10 years of service and as per the policy of the Government, she is liable to be regularised in post in which she is working since long. This position of law is well settled and is beyond controversy as per decision of the Supreme Court in the case of Gujarat Agricultural University Vs. Rathod Labhu Bechar and Ors., AIR 2001 SC 706.

8. In light of what is stated hereinbefore the respondents are directed to consider the case of the

petitioner within a period of eight weeks from the date of receipt of certified copy of this judgement or writ of this Court, whichever is earlier, in light of the three Government Resolutions dated 26th December, 1980, 15th October, 1992 and 15th February, 1999 and absorb the petitioner as peon in Class-IV post and grant all consequential benefits including payment of regular salary and arrears on the said basis.

The petition is allowed in the aforesaid terms. Rule is made absolute. There shall be no order as to costs. Direct service permitted.

Sd/-

(D.A.Mehta, J)

'Bhavesh'